



Bureau of Animal Protection Newsletter Spring 2014

Equine Neglect Investigations Short Course Level II

The Bureau of Animal Protection had a very successful Equine Neglect Investigations Short Course Level I in March at Colorado State University's B.W. Pickett Equine Center and we are proud and excited to let everyone know that we are in the planning stages of a Level II course. Level II will be more in depth on subject matter and we hope to have an opportunity to continue Equine Body Condition Scoring training on horses that were the subject of actual cases. Feedback from Level I consistently reveals the need for BAP agents to score horses in thin condition and we intend to fill that need. The introduction to body condition scoring in Level I is to let investigators



interact, and do hands-on score normal horses. We think the knowledge and experience of scoring horses in acceptable ranges is a valuable asset for investigators to have in the field and scoring thin horses in Level II is valuable for comparison and makes better, more efficient and effective investigators.

We are planning Level II for late August or September; we will send everyone an announcement. Be sure to reserve your spot as soon as you can, we have a capacity of 30 attendees and this class fills very quickly! Hope to see you there!

The Kids in the Backyard

Many urban jurisdictions have seen a dramatic rise in backyard livestock for the production of food and/or fiber but often, the owners are not aware of the requirements of individual ID as it relates to disease control. A good example of this is backyard goats and sheep which are subject to the disease of scrapie, a fatal disease that affects the central nervous system. Scrapie in goats and sheep is similar to Chronic Wasting Disease (CWD) in cervids like deer and elk, Bovine Spongiform Encephalopathy (BSE) or more commonly known as “Mad Cow Disease” in cattle and Creutzfeldt-Jakob disease in humans. Many of you may remember the mass depopulation of domestic cervids in late 2001 and early 2002 in efforts to control CWD and limit exposure to other domestic and wild cervids. Scrapie, like CWD and BSE, is a Transmissible Spongiform Encephalopathy and is caused by a mutated protein called a prion which causes microscopic holes in the brain giving it a “spongy” appearance. Signs of scrapie develop slowly; positive animals display symptoms ranging from tremors to incoordination and aggressiveness. Once the animal displays symptoms it usually “wastes away” and dies within 2 months. As animal cruelty investigators, this is an important thing to remember as it may not be a neglect or mistreatment issue at all!



While you are all out checking on backyard goats and sheep please look for official USDA scrapie tags. If the animals are not tagged, please refer then to the Colorado State Veterinarian's Office or the USDA area office. Either can answer any questions about the disease or proper tagging protocol. All sheep and goats require a scrapie tag prior to movement from their premises of origin.



Colorado State Veterinarian's Office-
303-239-4161

USDA Area Office - 303-231-5385

Link to USDA approved sheep and goat
scrapie tag supplier

http://www.shearwell.com/usa_intro.html

Krabloonik Investigation

The District Attorney's Office in the 9th Judicial District contacted the Colorado Department of Agriculture's Bureau of Animal Protection and Pet Animal Care and Facilities program to assist in an animal cruelty investigation involving over 250 sled dogs owned by Dan McEachen of Krabloonik Fine Dining and Dogsledding in Snowmass, CO. Investigators upon probable cause obtained a search warrant to gather evidence in the investigation including individual identification and body condition scorings of each dog on the property.

The department, for the first time, employed the use of ipads and a program developed to identify and trace movement of livestock to monitor diseases. Investigators were able to physically tag each dog with a number signifying location and an individual number. That number was entered into the ipad along with photos so they were able to not only individually number, but document physical descriptions and body condition of each dog that day. This data was later downloaded into a database for evidence and for future reference in efforts to track the nutritional plane of each dog thereby proving the fact that a particular dog has either gained weight, lost weight, developed lesions, and whether injuries are new, getting better or getting worse.



This form of documentation worked exceedingly well. Investigators got all of the necessary information in an organized fashion in an expedited amount of time. All dogs were individually identified and documented according to location in less than five hours. The database was then turned over to the District Attorney in an easy to read format for court preparation. Innovative minds figured out that they could adapt an existing livestock application for use in high volume animal cruelty investigations. Kudos go to everyone involved, it was a great success!

Oregon appellate court decision rocks animal investigators

The recent decision by the Oregon court making evidence gained in an animal neglect case inadmissible raises questions among investigators. According to court papers, the dog was in the back yard and in "plain view" to the investigator who had consent to be in the residence. The investigator stated that the dog was "in a near emaciated condition" and appeared to be eating

random things and trying to vomit. The officer asked the owner why the dog was in that condition and said she was out of dog food but would be getting more that night. The officer concluded that the dog “certainly appeared neglected” and there was a “strong possibility” that the dog needed medical care. The officer ultimately asked the defendant to sign a temporary medical release form and the owner refused. Ultimately, the officer took possession of the dog, (notably without a warrant) “in order to make a determination if [he] was going to pursue this criminally” and to “determine what [was] wrong with [the dog], to get him vet care.

Also according to court papers the veterinarian fed the dog, took blood and fecal samples for testing. The veterinarian also weighed the dog and charted its progress over time thus leading him to the conclusion that there was nothing wrong with the dog other than lack of feed leading to starvation as opposed to any sickness or disease.

The defendant challenged the state in court arguing that it was a warrantless seizure of the defendant “property” (the dog). The trial court determined that the officer had probable cause and that the dog was lawfully seized due to the plain view exception to the warrant requirement since the officer had consent to be in the apartment from which he saw the dog. The trial court also accepted the evidence gained after seizure of the dog, the blood and fecal samples, feeding, weight gain chart etc. that helped the prosecution get an animal cruelty conviction. The case was appealed.

The appellate court agreed with the trial court in that the dog was indeed lawfully seized. The



defense, however, argued that a warrant was required to “search” by “sampling” the dog and gather evidence that was otherwise unseen by the investigator at the time of seizure (the blood, feces, weight, test results and so on). The state responded by arguing that an animal’s statutory right to basic care and freedom from neglect as a “crime victim” trumps the defendant’s Constitutional property rights under the Fourth Amendment. The appellate court disagreed with the state and concluded by saying that “a person who owns an animal does not have diminished *constitutional*

possessory and privacy rights with respect to that animal – personal property... because the legislature has criminalized animal abuse and neglect.” The veterinarian was acting as an agent of the state and acted at the state’s direction when he took the blood and fecal samples, as well as charting its weight over time. The appellate court determined that “extracting and testing the dog’s blood was a ‘search’” and the blood drawn from the dog “involved a physical intrusion into the defendant’s property and the testing of blood ‘revealed evidence that was not otherwise exposed to public view’ or to those who had lawful access to the dog while it was in the state’s custody.

Therefore, the appellate court overruled the trial court in that that the warrantless search of the dog itself, was a violation of the defendant’s Constitutional rights and “evidence discovered as a result

of that search should have been suppressed” (ref. court documents) resulting in the reversal of the defendant’s animal cruelty conviction.

The Bureau of Animal Protection recommends that agents or other investigators work with their DA’s and obtain a well drafted search warrant to include any testing or sample collection a veterinarian may do in the course of treating the animal. As illustrated by this case, if investigators use anything obtained by a veterinarian for the purpose of evidence they must have a warrant to do so, it will make your cases much stronger in the end.

As always, please feel free to give us a call. We would be happy to visit with you about any investigation you may be involved with.

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Bureau of Animal Protection:
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Appeals court says pets are 'property' as it throws out dog-starving conviction



A decision reversing the animal-neglect conviction of a dog owner was made by a three-judge panel of the Oregon Court of Appeals. (*Oregon Judicial Department*)

The **Oregon Court of Appeals** Wednesday threw out the conviction of a 28-year-old woman found guilty of starving her dog based on evidence from a veterinarian who tested and treated the animal without a warrant.

The ruling could set a precedent by making it more difficult for animal-cruelty investigators to seek instantaneous care for beaten, starved or otherwise injured pets. And the ruling could make it tougher for prosecutors to go after people suspected of abusing or neglecting their animals.

In reversing the 2011 misdemeanor conviction of Amanda L. Newcomb, a three-judge panel of the Court of Appeals ruled that animals are living beings but they are also property under the eyes of the law. And that doesn't trump their owners' constitutional rights to be free from unreasonable searches and seizures.

The case at issue began when an informant told the Oregon Humane Society that Portland-area resident Newcomb was beating her dog, failing to properly feed it and keeping it in a kennel for many hours a day. An animal-cruelty investigator went to Newcomb's apartment in December 2010 and, once invited in, saw the dog in the yard "in a near emaciated condition." The dog, the investigator reported, "was kind of eating at random things in the yard, and trying to vomit."

The investigator asked why, and Newcomb said she was out of dog food but that she was going to get more that night, according to the Court of Appeals' summary of the case.

The investigator determined a "strong possibility" existed that the dog needed medical care and brought the dog to a Humane Society vet. The vet gave the dog food, charted his weight and measured his rapid weight gain over several days. The vet also tested the dog's feces and blood, ruling out disease. The investigator concluded nothing was wrong with the dog other than it was very hungry.

Newcombe was charged in Multnomah County Circuit Court with **second-degree animal neglect**.

She tried to suppress the vet's findings by saying her state and federal constitutional rights to be protected from unreasonable search and seizure were violated when the investigator seized her dog without a warrant and the veterinarian tested her dog without a warrant.

Newcomb argued that dogs are personal property and she has the same privacy rights to her dog as she would to objects such as pocket knives or boots -- which is a reference to previous case law.

The prosecutor countered that unlike other possessions, animals have a right to medical care and to be free from neglect.

Judge Eric Bergstrom denied Newcomb's attempt to suppress the evidence, and she was found guilty. She was sentenced to one year of probation and ordered not to possess animals for five years.

The Court of Appeals on Wednesday found that the investigator had probable cause to seize the dog and didn't need a warrant. But the appeals court found the vet's "search" of the dog violated Newcomb's privacy rights because the authorities hadn't obtained a warrant.

Although many judges would likely issue a warrant under such circumstances, critics argue the ruling will slow down the process of getting medical care to animals.

The appeals court sent the case back to Multnomah County Circuit Court for further proceedings, but it is unlikely Newcomb will be retried since the main evidence against her isn't admissible.

Judges Timothy Sercombe, Darleen Ortega and Erika Hadlock took part in the decision.

-- Aimee Green

****Caution** Be careful, protect yourself when dealing with cats!**

Fatal pneumonia caused by Extraintestinal Pathogenic E coli (ExPEC) in a juvenile cat recovered from an animal hoarding incident.

Click here for the abstract: <http://www.ncbi.nlm.nih.gov/pubmed/24041770>

Colorado Department of Agriculture is moving

The entire department will be moving to a new location as of May 19, 2014. The new offices will be located in Broomfield at 305 Interlocken Parkway. We will have new phone numbers as well and will send you all our contact information soon.

Colorado Hay Market Report:

Hay prices still high in many parts of the state despite higher supplies being around the corner; small squares for example range from about \$9 up to \$12/bale in the NE part of the state.

http://www.ams.usda.gov/mnreports/gl_gr310.txt

To learn more about the Bureau of Animal Protection and access more resources visit <http://www.colorado.gov/cs/Satellite/Agriculture-Main/CDAG/1175705256252>